

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.44 of 2015

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 30.09.2014 and 22.10.2014 respectively passed by the learned Additional District Judge, Padampur in RFA No.31/40 of 2010/2013 confirming the judgment and decree dated 25.03.2010 and 08.04.2010 respectively passed by the learned Civil Judge, Senior Division, Padampur in Civil Suit No.93 of 2008.

Manbodh Bariha

....

Appellant

-versus-

Rama Sandh & Others

....

Respondents

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellant

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M/s.R.Acharya, T.Barik,
S.Hidayatulla, N.Barik and
A. Sethy
(Advocates)

For Respondents

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CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 27.06.2022 : Date of Judgment:04.07.2022

D.Dash,J. The Appellant, by filing this Appeal, under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and decree dated 30.09.2014 and 22.10.2014 respectively passed by the learned Additional District Judge, Padampur in RFA No.31/40 of 2010/2013.

By the same, the Appeal filed by the Appellant (Defendant) under section 96 of the Code has been dismissed and thereby the judgment and

decree dated 25.03.2010 and 08.04.2010 respectively passed by the learned Civil Judge, Senior Division, Padampur in Civil Suit No.93 of 2008 have been confirmed.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. The Plaintiff's case is that the land in the suit was originally 'Jhankari Maufi' land of Village-Sarkanda. One Udhaba @ Keshaba Bariha was the 'Jhankar' of the village and was performing the Seba Puja of the village Deity. In lieu of his service, he was in possession and enjoyment of the suit land with other lands. On coming into force of the Orissa Offices of Village Police (Abolition), Act, 1964 (for short, 'the Act of 1964'), the 'Jhankari' system was abolished. Therefore, in consonance with the provisions of the said Act of 1964, Udhaba @ Keshaba Bariha applied for settlement of the suit land with other Jhankari land in his name under Rayati status. Pursuant to the said application, V.P.A. Case No.824 of 1965-66 was initiated by Tahasildar, Padampur for settlement of the Jhankari land in the name of Keshaba. During pendency of that case, Keshaba Bariha died. So, his wife being substituted in his place, the suit land was settled in her name, i.e, Ukia Bariha on Rayati status. It was in the year 1969 and Rayati patta was issued in her favour. It is stated that while Ukia Bariha was in possession of the Jhankari land, for her legal necessity, she sold the suit land to one Parkhita Sandha, the father of the Plaintiff Nos.1 and 2 for a consideration of Rs.2000/- by executing a registered sale deed on 20.04.1979. Pursuant to the said sale deed, possession of the suit land was delivered by Ukia to Parikhita. Since the date of purchase, Parkhita

remained in possession of the suit land on his own right, title and interest till his death which took place in the year 1990. The Plaintiffs, being his legal heirs, continued to possess the same as before. It is stated that while the VPA case No.827 of 1965-66 was disposed of, by that time the attestation stage of Major Settlement Operation was already over. Ukia, due to her ignorance, did not produce the Patta before the Settlement Authority for which the suit land was recorded in the name of Ukia under Bebandobasta status. In the year 1986, a Bebandobasta Case bearing no.10 of 1986 was initiated by the Tahasildar, Sohella in the name of Ukia for change of Bebandobasta status into Rayati status. During pendency of that case, Ukia died.

After the death of Ukia, the Defendant along with one Chintamani claiming themselves to be the successors of deceased Ukia, contested the case. The Tahasildar, without issuing notice to the purchaser or his successors and the persons in whose favour note of possession of portions of land had been recorded in the remarks column of the record of right, illegally disposed of that case settling the land in the name of Chintamani. Thereafter, the Defendant filed a case, T.S. No.64/20 of 2000 in the Court of the Civil Judge, Senior Division, Sohela for declaration that he is the next heir of the last male owner, Keshaba and as such is the reversioner. The suit was filed without impleading the plaintiffs as the parties and obtained a favourable order to the above effect was obtained. On the basis of said decree, the Defendant filed Mutation Case No.691 of 2002. The Tahasildar, without issuing notice to the Plaintiffs, mutated the suit land with other lands in the name of the Defendant. It is stated that the father of the Plaintiff Nos.1 and 2 being member of Scheduled Tribe, was an illiterate and innocent person. He, therefore, without taking further steps for recording of the suit land

in his name, continued to possess the same. In the year 2002, when Plaintiff No.1 went to the Revenue Inspector's Office to pay the rent, he could know that the land has been recorded in the name of Defendant. Then, he filed Mutation Case No.1066 of 2002 before the Tahasildar, Sohela. The application was rejected in view of the earlier recording of the suit land. The Plaintiffs thereafter filed the suit.

4. The Defendant, in the written statement, has submitted that Parkhita Sandha, the father of the Plaintiffs was not in possession of the suit land on his own, right, title and interest at any given point of time. He also denied the possession of the Plaintiffs over the suit land. It is stated that Ukia had no legal necessity to sell the land. It is also claimed that Ukia was an old issueless, illiterate Adibasi lady and taking advantage of the situation, the father of the Plaintiffs had managed to obtain said sale deed from her which, however, has never been acted upon and there has been no delivery possession pursuant to the same. According to the Defendant, Ukia was not in continuous possession of the suit land till her death and after her death, the Defendant is possessing the suit land peacefully without any disturbance from any quarter. It is also the case of the Defendant that Ukia was not a Rayat and as such had no Rayati right to transfer any land and, therefore, this transfer is void abinitio and not binding on him. The right, title and interest and possession over the suit land, as claimed by the Plaintiffs, stand denied.

5. On the above rival pleadings, the Trial Court framed as many as seven issues. Answering the crucial issue, i.e, issue no.4 with regard to the validity of the sale deed dated 20.04.1979 said to have been executed by Ukia in favour of the father of the Plaintiff Nos.1 and 2, namely,

Parkhita Sandha and consequentially the transfer of right, title, interest and possession over the suit land, as claimed by the Plaintiffs, upon examination of evidence and their evaluation, answer has been returned that Ext.1, the sale deed, is a valid document and by virtue of that said sale deed, the right, title and interest in respect of the suit land has passed on to the hands of Parkhita Sandha, the father of the Plaintiff Nos.1 and 2. The issue with regard to the possession of the suit land by the Plaintiffs has also been answered in favour of the Plaintiffs in further saying that the mutation of the suit land in the name of the Defendant has not created any right, title and interest in respect of the suit land in favour of the Defendant nor the title of the Plaintiffs over the suit land as they have got by virtue of Ext.1 has been extinguished. Other issues being accordingly answered, the suit has been dismissed.

6. The Defendant thus having suffered from the judgment and decree passed by the Trial Court, have carried an Appeal, has been unsuccessful. The findings recorded by the Trial Court, upon revaluation of the evidence on record, have been affirmed by the First Appellate Court.

7. Learned counsel for the Appellant submitted that the Courts below have committed grave error by not holding that Ukia when executed the registered sale deed dated 20.04.1979 in respect of the suit land, was having no alienable right over the same because of the pendency of Bebandobasta Proceeding. He submitted that when said Ukia was not having the rayati status as per the record available as on 20.04.1979 in respect of the land, the Courts below ought to have held the sale deed (Ext.1) to be void and inoperative and consequently, the Plaintiff's right, title, interest and possession over the suit land ought not

to have been declared. He contended for admission of this Appeal to answer the above as the substantial questions of law.

8. Keeping in view the above submission, I have carefully read the judgments passed by the Courts below.

9. Indisputably, the suit land originally was 'Jhankari Maufi' land. One Keshaba Bariha was the Jhankar of the village Sarkanda and he was in possession of the suit land with other Jhankari land in lieu of his service in performing Seba Puja of the village Deity. The Jhankari system being abolished by virtue of coming into force of the Act of 1964, the suit land stood vested with the State. One VPA case bearing No.824 of 1965-66 was initiated at the instance of Keshaba and he died during pendency of that proceeding, the land has been finally settled in the name of his wife Ukia. Ukia then is stated to have sold the land while being in possession of the same to the father of the Plaintiff Nos.1 and 2 and husband of Plaintiff No.3 for a consideration of Rs.2000/- and by execution of the registered sale deed followed by delivery of possession of the same. The Plaintiffs have proved the registered sale deed dated 20.04.1979 (Ext.1). The Plaintiff No.1 examined as P.W.1 and has deposed in support of the same and so also the attesting witness to the said registered sale deed. P.W.2 has given his evidence on oath. Both the Courts below have concurrently found that Ukia had executed the registered sale deed (Ext.1). The Defendant does not dispute that the suit land was under the possession of Jhankar, Keshaba Bariha. The settlement of the suit land finally ordered in favour of Ukia is also not disputed by the Defendant. When the evidence of D.Ws.1 and 2 reveal that Ukia died sixteen years before they deposed, roughly the year of death of Ukia comes to 1993-94. So, when the sale deed dated

20.04.1979 came into being, Ukia was alive and she survived for quite a long period even thereafter the sale deed has been taken from her without her knowledge or on any other ground. The Defendant, claiming the interest as reversionary, now cannot challenge the said sale deed as without any legal necessity in this suit filed in the year 2008, which he could have so done within at least 12 years of death of Ukia by the year 2005. Fact remains that Ukia besides selling this land in the suit, has also sold some other lands to different persons as can be seen from the remark column of the record of right in respect of those plots. The Courts below have concurrently held that pursuant to the said sale deed, Ukia has delivered with the possession of the suit land to Parikbhita and he remained in cultivating possession of the same till his death whereafter the Plaintiffs have been in possession. In course of hearing, no such material has been pointed out to persuade this Court to hold that such finding with regard to possession of the suit land is perverse as the Courts below have omitted to take certain important aspects/features appearing in the evidence into consideration or have read some extraneous into evidence in recording said finding.

The witnesses examined from the side of the Defendant, i.e, D.Ws.1, 2 and 3 admit the possession of Parkhita in respect of the suit land. But, it is stated by them that he was cultivating the suit land as lease holder of Ukia. That being so stated, no such material have has, however, placed in evidence. Therefore, the Courts below have rightly held that the case set-forth by these witnesses that Parkhita's possession over the suit land as a lease holder is not acceptable. The Defendant has not tendered any evidence as to from which year, he was possessing the suit land and in a vague manner, it is stated that fifteen years back from the time of death of Ukia, he has been cultivating the suit land with

lands of Ukia. Merely because the sale deed was executed when the Bebandobasta Proceeding was pending, the legal effect of the sale deed would not be reduced to zero. The Courts below have discussed the position of law with regard to the mutation proceeding and have rightly found that even though the suit land has been mutated in the name of the Defendant, by the same, the right, title and interest of the Plaintiffs over the suit land is not extinguished.

For all the aforesaid, the submission of the learned Counsel for the Appellant that there stands the substantial questions of law as indicated in the aforesaid paragraph for being answered, meriting admission of this Appeal cannot be countenanced with.

10. In the result, the Appeal stands dismissed. There shall however be no order as to cost.

**(D. Dash),
Judge.**

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